

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

FEB 4 1999

FCC MAIL ROOM

In the Matter of)	
)	
Amendment of Section 73.202(b),	)	MM Docket No. 99-12
Table of Allotments,	)	RM-9441
FM Broadcast Stations.)	
(Joliet, Montana))	
)	
(Palacios, Texas)	)	MM Docket No. 99-13
	)	RM-9428
)	
(Columbia Falls, Montana)	)	MM Docket No. 99-14
	)	RM-9442
)	
(Neihart, Montana)	)	MM Docket No. 99-15
	)	RM-9440
)	
(Eden, Texas)	)	MM Docket No. 99-16
	)	RM-9403
)	
(Belt, Montana)	)	MM Docket No. 99-17
	)	RM-9409
)	
(Washburn, Wisconsin)	)	MM Docket No. 99-18
	)	RM-9414
)	
(Lockwood, Montana)	)	MM Docket No. 99-19
	)	RM-9397
)	
(Florence, Montana)	)	MM Docket No. 99-20
	)	RM-9413
)	
(Perry, Florida)	)	MM Docket No. 99-21
	)	RM-9389
)	
(Ashland, Wisconsin)	)	MM Docket No. 99-22
	)	RM-9426

NOTICE OF PROPOSED RULE MAKING

Adopted: January 13, 1999

Released: January 29, 1999

Comment Date: March 22, 1999

Reply Date: April 6, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-12, RM-9441**Petitioner:** Mountain West Broadcasting

c/o Victor a. Michael, President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 259C3 at Joliet, Montana, as the community's first commercial FM transmission service.

Community	Present	Proposed
Joliet, Montana	-----	259C3

Coordinates: 45-29-06 NL and 108-58-18 WL**Additional Information:** Channel 259C3 can be allotted to Joliet without a site restriction.**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

B. MM Docket No. 99-13, RM-9428**Petitioner:** Prawn Broadcasting Company

c/o Henry E. Crawford
Law Office of Henry E. Crawford
1150 Connecticut Avenue, N.W., Suite 900
Washington, D. C. 20036-4192

Proposal: Allot Channel 252A at Palacios, Texas, as the community's second FM broadcast service.

Community	Present	Proposed
Palacios, Texas	259C2	252A, 259C2

Coordinates: 28-44-10 NL and 96-08-18 WL

Additional Information: The above coordinates reflect a site restriction 8.3 kilometers (5.2 miles) northeast of the community.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

C. MM Docket No. 99-14, RM-9442**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 276C3 at Columbia Falls, Montana, as the community's second FM broadcast service.

Community	Present	Proposed
Columbia Falls, Montana	240C	240C, 276C3

Coordinates: 48-22-30 NL and 114-10-54 WL

Additional Information: Since Columbia Falls is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment of Channel 276C3 at Columbia Falls. The channel can be allotted to Columbia Falls

without a site restriction.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

D. MM Docket No. 99-15, RM-9440

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 246C2 at Neihart, Montana, as the community's first local aural transmission service.

Community	Present	Proposed
Neihart, Montana	-----	246C2

Coordinates: 46-56-18 NL and 110-44-18 WL

Additional Information: Although the proposal for Channel 246C2 at Neihart complies with the Commission's spacing requirements, we note that both the community of Neihart and the allotment site for Channel 246C2 are located in the Lewis and Clark National Forest. Therefore, parties filing comments should address this issue. Additionally, we find that Neihart is an incorporated community with a population of 53 people according to the 1990 U. S. Census. Parties filing comments are requested to present the Commission with specific information to demonstrate that Neihart has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein.

Since Neihart is located within 320 kilometers (220 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment of Channel 246C2 at Neihart.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

E. MM Docket No. 99-16, RM-9403**Petitioner:** Kent S. Foster

c/o: Lawrence N. Cohn
Joseph M. Di Scipio
Cohn and Marks
1920 N Street, N.W., Suite 300
Washington, D. C. 20036

Proposal: Allot Channel 283A at Eden, Texas, as the community's first local aural transmission service.

Community	Present	Proposed
Eden, Texas	-----	283A

Coordinates: 31-13-06 NL and 99-50-36 WL

Additional Information: Since Eden, Texas, is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government will be requested for the allotment of Channel 283A at Eden.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

F. MM Docket No. 99-17, RM-9409**Petitioner:** Belt Broadcasting Company

c/o Frank R. Jazzo
Andrew S. Kersting
Fletcher, Heald & Hildreth, P.L.C.
1300 N. Seventeenth Street, 11th Floor
Arlington, Virginia 22209

Proposal: Allot Channel 269A at Belt, Montana, as the community's first local aural transmission service.

Community	Present	Proposed
Belt, Montana	-----	269A

Coordinates: 47-23-12 NL and 110-55-18 WL

Additional Information: Since Belt, Montana, is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment of Channel 269A at Belt.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

G. MM Docket No. 99-18, RM-9414

Petitioner: The State of Wisconsin Educational Communications Board

c/o Todd D. Gray
Margaret L. Miller
Christine J. Newcomb
Dow, Lohnes & Albertson, pllc
1200 New Hampshire Avenue, N.W., Suite 800
Washington, D. C. 20036

Proposal: Allot Channel 284A at Washburn, Wisconsin, and reserve the channel for noncommercial educational use.

Community	Present	Proposed
Washburn, Wisconsin	290C1	*284A, 290C1

Coordinates: 46-40-12 NL and 90-53-36 WL

Additional Information: Since Washburn, Wisconsin, is located within 320 kilometers (220 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment of Channel *284A at Washburn.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

H. MM Docket No. 99-19, RM-9397

Petitioner: Lockwood Broadcasting Company

c/o Frank R. Jazzo
Fletcher, Heald & Hildreth, P.L.C.
1300 N. Seventeenth Street, 11th Floor
Arlington, Virginia 22209

Proposal: Allot Channel 294A to Lockwood, Montana, as the community's first local aural transmission service.

Community	Present	Proposed
Lockwood, Montana	-----	294A

Coordinates: 45-49-09 NL and 108-24-51 WL

Additional Information: Channel 294A can be allotted to Lockwood without a site restriction.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

I. MM Docket No. 99-20, RM-9413

Petitioner: Florence Broadcasting Company

c/o Frank R. Jazzo
Fletcher, Heald and Hildreth, P.L.C.
1300 N. Seventeenth Street, 11th Floor
Arlington, Virginia 22209

Proposal: Allot Channel 278A at Florence, Montana, as the community's first local aural transmission service.

Community:	Present	Proposed
Florence, Montana	-----	278A

Coordinates: 46-37-42 NL and 114-04-48 WL

Additional Information: Since Florence, Montana, is located within 320 kilometers (220 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment of Channel 278A at Florence. Channel 278A can be allotted to Florence without a site restriction.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

J. MM Docket No. 99-21, RM-9389

Petitioner: Albert L. Brooks

c/o: John S. Neely
Miller & Miller, P.C.
P. O. Box 33003
Washington, D. C. 20033

Proposal: Allot Channel 299C3 at Perry, Florida, as the community's third FM broadcast service.

Community	Present	Proposed
Perry, Florida	221A, 228A	221A, 228A, 299C3

Coordinates: 29-59-47 NL and 83-39-33 WL

Additional Information: The above site is located 14.9 kilometers (9.3 miles) southwest of the community.

FCC Contact: Kathleen Scheuerle

K. MM Docket No. 99-22, RM-9426

Petitioner: The State of Wisconsin Educational Communications Board

c/o: Todd D. Gray
Margaret L. Miller
Christine J. Newcomb
Dow, Lohnes & Albertson, PLLC
1220 New Hampshire Avenue, N.W., Suite 800
Washington, D. C. 20036

Proposal: Allot Channel 275A at Ashland, Wisconsin, and reserve the channel for noncommercial educational use.

Community	Present	Proposed
Ashland, Wisconsin	244C2, 227C1	244C2, 227C1, *275A

Coordinates: 46-35-24 NL and 90-53-00 WL

Additional Information: Since Ashland, Wisconsin, is located within 320 kilometers (220 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for the allotment of Channel *275A at Ashland.

FCC Contact: Kathleen Scheuerle, (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached

Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before March 22, 1999, and reply comments on or before April 6, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, 445 Twelfth Street, S. W.; TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its Headquarters, Washington, D. C.